Supreme Court of the United States.

OCTOBER TERM, A. D. 1903.

WYCKOFF, SEAMANS & BENEDICT,
Petitioner,

vs.

HOWE SCALE COMPANY of 1886 and
FAY-SHOLES COMPANY,
Respondents.

Reply Brief for Petitioners.

The United States Circuit Court in and for the district of Vermont decreed in favor of the Petitioner herein in respect of the name "Remington" and abbreviation "Rem" in the short name "Rem-Sho."

The United States Circuit Court of Appeals for the Second Circuit modified the decree of the Circuit Court and directed it to decree in favor of the Petitioners, Wyckoff, Seamans & Benedict, only as to the name "Remington."

In the dissenting opinion of Judge Wallace, no reference whatever is made to the abbreviated name "Rem-Sho."

This motion is based upon the record hitherto filed in this Court by Respondents and upon which their application for writ of *certiorari* has been granted.

The sole purpose of the Respondents is to secure a reversal of the decision of the Circuit Court of Appeals in respect of the name "Remington."

The desire and purpose of the Petitioner herein is to obtain leave of this Court to present the whole case—"Rem-Sho" as well as "Remington"—to it, to the end that all questions at issue between the parties to this action may be finally determined.

The reasons—save one—assigned by the Respondents in their brief in opposition to the granting of the prayer of the petition herein, are in substance and effect the same as those pressed upon the attention of this Court by Petitioner in opposition to the application of the Respondents for a writ of *certiorari*.

In opposition to Respondents' application we urged that this Court took jurisdiction of *certiorari* only in cases of peculiar gravity and importance or to secure uniformity of decision, and contended that the case presented did not fall within that category.

We further contended that the crucial question in the case was one of *fact* and not of law. This Court everruled our contentions in opposition to Respondents' application and granted a writ of *certiorari* in accordance with the prayer of Repondents' petition. In their brief in opposition to this application, subdivisions (a), (c) and (d) thereof, the Respondents have in substance adopted and repeated our previous contentions, and have cited *the same cases* in opposition to Petitioner's application. We respectfully submit that if our contentions hitherto made were not of force in resisting the application of the Respondents, those contentions ought not to be of any force or effect here.

In reply to subdivision (b) of Respondents' brief, we say that in the Illinois case Respondents' stipulated to abide the event of the decision by the Circuit Court of Appeals of the Second Circuit, and to be bound thereby, but that this Petitioner entered into no stipulation whatever in respect to that case.

All questions at issue in the Illinois case are now open for determination in so far as this Petitioner is concerned, and in the absence of any controlling decision by this Court there is no rule of comity which deprives the Illinois Courts from considering and determining the whole case if the Petitioner shall desire to be heard thereon.

Stover Mfg. Co. *vs.* Mast, Foos & Co., 89 Fed. Rep., 333; S. C. 177 U. S., 485.
Welsbach Light Co. *vs.* Cosmopolitan Incandescent Light Co., 104 Fed. Rep., 83, 84, 85.

We respectfully submit that the prayer of the petitioner herein should be granted.

EDMUND WETMORE,
HENRY D. DONNELLY,
Attorney and of Counsel for Petitioner.